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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

No. 864

LOWE BROTHERS COMPANY, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

SUPPLEMENTAL MEMORANDUM FOR PETITIONER.

JOHN E. HUGHES,
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Chicago, Illinois.
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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SUPPLEMENTAL MEMORANDUM FOR PETITIONER.

May It Please the Court:

This memorandum is filed with reference to the question of Mr. Justice Butler concerning whether the Court can take judicial notice that the Collector of Internal Revenue who was in office in 1918 was not in office when this suit was filed on May 24, 1930. That the Court can and should take judicial notice of this see *York & M. Line Co.* v. *Winans*, 58 U. S. 30, 41; *Brown* v. *Piper*, 91 U. S. 37, 42; *Keyser* v. *Hitz*, 133 U. S. 138, 146; *Consolidated Gas Co.* v. *Hardy*, 14 F. Supp. 223; *Roth* v. *Baldwin*, 74 F. (2d) 1003, cer. den. 295 U. S. 737; *Anderson* v. *Rohrer*, 3 F. Supp. 367; *United States* v. *Phelps*, 40 F. (2d) 500; *Frischer & Co., Inc.* v. *Bakelite*, 39 F. (2d) 247; *Wigmore on Evidence* (Second Edition) Sec. 2575 and note; *Evidence*, 23 Corpus Juris, Sections 1888, 1889, p. 97. The name of each Collector and

date when he was confirmed by the Senate appears in the Congressional Record.

For convenience in locating these names with dates see the list of Collectors contained under the heading "Personnel" in the C. C. H. 1937 Tax Service, p. 17023. This list is as follows:

OHIO, FIRST COLLECTION DISTRICT.

Andrew C. Gilligan, August 1, 1913-November 30, 1919; Stephen W. McGrath (Acting), December 1, 1919-January 31, 1920; Stephen W. McGrath, February 1, 1920-November 24, 1921; Charles M. Dean, November 25, 1921-September 15, 1927; Thomas M. Taylor (Acting), September 16, 1927-October 16, 1927; Louis J. Huwe, October 17, 1927-August 24, 1933.

Apart from judicial notice it is further submitted that the allegation (R. 3) that the Collector who was in office in 1924 was not in office when the suit was brought is *prima facie* an allegation that the Collector in office in 1918 (six years earlier) was also not in office when the suit was brought just as an allegation that the Chief Justice of this Court in 1924 was not in office in 1930 would be *prima facie* an allegation that the Chief Justice of this Court in 1918 was not in office in 1930. This *prima facie* presumption is subject to rebuttal by showing the abnormal circumstance that although the allegation shows the 1918 Collector resigned before suit was brought, he was later reappointed. This circumstance is abnormal because the Court will take judicial notice that Collectors are political appointees and a different political party was in control of appointments in 1918 than from 1924 to 1932.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago, Illinois.
Counsel for Petitioner.